

## **New Guidance Clarifies Application Under PPP of Affiliation Rules and 500-Employee Limit**

Late on April 3, 2020, the Small Business Administration issued an interim final rule ([Affiliation IFR](#)) addressing the application of the SBA's affiliation rules to loan applications under the Paycheck Protection Program (PPP). (The Affiliation IFR supplements the general PPP interim final rule issued on April 2, 2020.) In addition to the Affiliation IFR, the SBA issued on April 3 a summary overview of the its affiliation rules ([Affiliation Overview](#)). **Together, the Affiliation IFR and Affiliation Overview provide helpful clarification of how the SBA's affiliation rules apply to dealers applying for loans under the PPP.**

**1. Affiliation guidance for dealers in the Affiliation IFR** Importantly, the following question and answer appears on page 5 of the Affiliation IFR.

*“How do SBA’s affiliation rules affect my eligibility and apply to me under the PPP?”*

***An entity generally is eligible for the PPP if it, combined with its affiliates, is a small business as defined in section 3 of the Small Business Act (15 U.S.C. 632), or (1) has 500 or fewer employees whose principal place of residence is in the United States or is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry, and (2) is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business concern.***

(Emphasis added.) With the removal of the non-highlighted language (which is unrelated to business concerns with no more than 500 employees), the Affiliation IFR provides the following important guidance for dealers.

***An entity generally is eligible for the PPP if it, combined with its affiliates, . . . (1) has 500 or fewer employees whose principal place of residence is in the United States . . . and (2) is . . . any other business concern.***

In addition to the foregoing, footnote 1 of the Affiliation IFR directly states that (1) the PPP provisions of the CARES Act “waive the [SBA] affiliation rules for . . . any business concern operating as a franchise that is assigned a franchise identifier code by the [SBA]” and that those statutory waivers “remain in full force and effect.” Footnote 1 concludes by stating that “[a]s a result, the [SBA] affiliation rules . . . do not apply to” a business concerns operating as a franchise that has been issued a franchise identifier code (FIC).

**2. Affiliation guidance for dealers in the Affiliation Overview** Consistent with the Affiliation IFR, the Affiliation Overview includes the following language.

**Waiver. The affiliation rules** described above **are waived for** (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) **any business concern operating as a franchise that is assigned a franchise identifier code by the SBA**; and (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681).

(Emphasis added.) With the removal of the non-highlighted language (which is unrelated to business concerns with no more than 500 employees), the Affiliation Overview provides the following guidance for dealers.

**Waiver. The affiliation rules . . . are waived for . . . any business concern operating as a franchise that is assigned a franchise identifier code by the SBA.**

Click on the link below for the most up to date codes:

[OEM Franchise Identifier Codes](#)